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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/828,358	04/09/2001	Karel van den Berg	8553/213	1711

7590

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EXAMINER

SMITH, KIMBERLY S

ART UNIT

PAPER NUMBER

3644

DATE MAILED: 06/05/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/828,358

Applicant(s)

BERG, KAREL VAN DEN

Examiner

Kimberly S. Smith

Art Unit

3644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 May 2002.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1 and 31-61 is/are pending in the application.
- 4a) Of the above claim(s) 35,36,38-40,42-44,50-56,58 and 61 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,31-34,37,41,45-49,57,59 and 60 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 April 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All   b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election with traverse of Species I in Paper No. 5 is acknowledged. The traversal is on the ground(s) that the species are not independent and distinct inventions. This is not found persuasive because each of the species functions in a distinct and separate manner. Species 1 uses the weight of the feed and the displacement thereof to measure the amount of feed left, has a deterrent means and does not have a closing means, Species II has a load sensor which measures the amount of load on a support arm to measure the weight of the feed and includes a closing means in the form of a rotatable cover and a voltage deterrent device, Species III includes a wall portion and a torque measuring roll to determine the amount of feed remaining wherein the opening is closed by rotation of the moveable feed unit and does not include a voltage, audio or visual deterrent device, Species IV uses a shaft attached to the feeding unit to determine the amount of feed remaining in the feed unit, having a closing means which is engaged by the roll to close the opening at which point the roll no longer engages for allowing the feed unit to return to the feeding position and does not include an audio, visual or voltage deterrent device and Species V requires a hinge pin positioned close to the roll and includes a stop for preventing movement of the feed unit and does not require an audio, visual or voltage deterrent. The requirement is still deemed proper and is therefore made FINAL.

2. The applicant's list of claims considered to read on Figure 1 does not include claim 45. As claim 45 is considered to read on Figure 1, it has been included in Species I and will be examined on the merits. Claim 58 has been included in the list of claims readable upon Figure 1.

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However, claim 58 claims the use of a closing means which is not directed to Species I and has therefore been withdrawn from further consideration

3. Claims 35, 36, 38-40, 42-44, 50-56, 58 and 61 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a non-elected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 5.

### *Drawings*

4. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference sign(s) not mentioned in the description: 52. A proposed drawing correction, corrected drawings, or amendment to the specification to add the reference sign(s) in the description, are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

5. The drawings are objected to under 37 CFR 1.83(a) because they fail to show an "entrance opening" as described in the specification. It appears that the feed unit is an enclosed structure in all the figures. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d). A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

***Specification***

6. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

The following title is suggested: "Feed Metering and Animal Identification Device Having an Angularly Displaceable Weighing Means".

***Claim Objections***

7. Claim 31 is objected to because of the following informalities: in line 6, the applicant refers to an "angular displaceable means". However, throughout the remaining claims, this is referred to as an "angular displacement means". It is suggested the applicant replace "displaceable" with - -displacement- - to improve continuity between the claims. Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

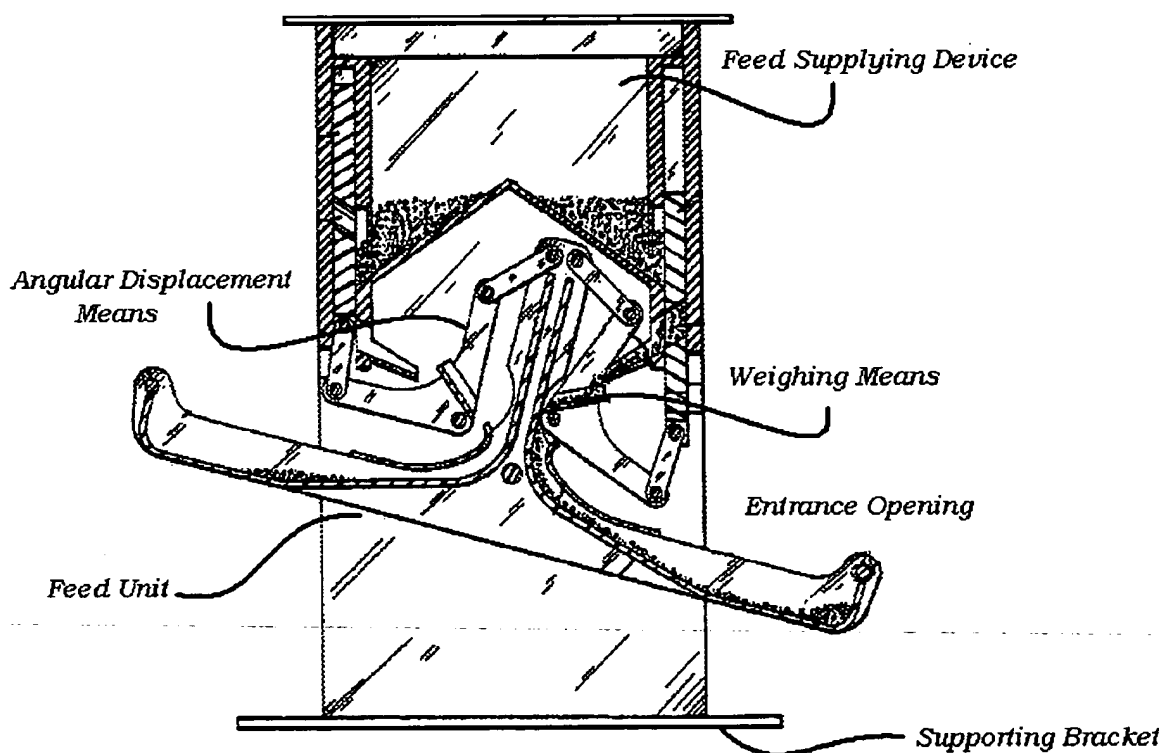
A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 1, 31 and 41 are rejected under 35 U.S.C. 102(b) as being anticipated by Anderson, US Patent 5,255,631.

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Anderson discloses a feed metering device for providing feed in measured portions to an animal comprising a feed unit, entrance opening, feed supplying device, weighing means wherein said feed unit is connected to the feed supplying device by an angular displacement means which comprises said weighing means, further comprising a supporting bracket for the feed unit.



*Fig. 3.*  
(Modified)

### ***Double Patenting***

10. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

11. Claims 1, 31-34, 37, 41, 45-49, 57, 59 and 60 are provisionally rejected under the judicially created doctrine of double patenting over claims 1, 27-54 of copending Application No. 09/828911. This is a provisional double patenting rejection since the conflicting claims have not yet been patented.

The subject matter claimed in the instant application is fully disclosed in the referenced copending application and would be covered by any patent granted on that copending application since the referenced copending application and the instant application are claiming common subject matter, as follows: both applications are claiming an animal identification feeding means having a weighing means comprising at least in part an angular displacement means

Furthermore, there is no apparent reason why applicant would be prevented from presenting claims corresponding to those of the instant application in the other copending application. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

***Allowable Subject Matter***

12. Claims 32-34, 37, 41, 45-49, 57, 59 and 60 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims and a terminal disclaimer in compliance with 37 CFR 1.321 (c) is timely filed.

13. The following is a statement of reasons for the indication of allowable subject matter:

The prior art fails to teach either alone or in combination in the device and method as claimed the use of a feed metering device having an animal identification means for determining the amount of feed to be distributed in conjunction with the use of a weighing means which is comprised at least in part by an angular displacement means. While Anderson teaches an angular displacement means for weighing feed for an animal and it is known in the art to have animal identification means used in conjunction with a feeding device, the combination of the Anderson reference with an animal identification means (for the use of limiting an animal) would not be considered obvious to one having ordinary skill in the art as the Anderson patent is directed to the feeding of wildlife in which it would be impossible for an identification means to be applied to the animal. Therefore, the combination of Anderson with the use of an animal limiting identification device is not considered to be obvious. Further, the prior art does not teach or render obvious the use of a weighing means providing data to the feed supplying device or the use of a measuring roll in contact with the feed unit.



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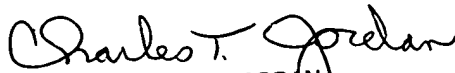
***Conclusion***

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Van den Berg (US 6,371,047 B1), Lewis et al. (US 6,349,671 B1), Fox (US 5,050,537), Pourshalchi (US 4,934,317), Carroll (US 4,475,481), DaSilva (US 4,655,170), Ostler (US 4,461,241), Parker (US 3,532,076), Le Du Jean (FR 2 671 940), Vogl (EP 0 610 171 A2).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kimberly S. Smith whose telephone number is 703-308-8515. The examiner can normally be reached on Monday thru Friday (8:30 - 5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles T Jordan can be reached on 703-306-4159. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-7687 for regular communications and 703-305-3597 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-5771.

  
CHARLES T. JORDAN  
SUPERVISOR, PATENT EXAMINER  
TECHNOLOGY CENTER 3644

Kimberly S. Smith  
Examiner  
Art Unit 3644

kss

June 1, 2002